

Introduced by Senator Moorlach

February 18, 2016

An act to amend Sections 13651 and 13656 of the Probate Code, relating to summary probate procedures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1271, as introduced, Moorlach. Summary probate procedures.

Existing law authorizes a surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse to file a petition in the superior court of the county in which the estate of the deceased spouse may be administered requesting an order that administration of all or part of the estate is not necessary because all or part of the estate is property passing to the surviving spouse. Existing law specifies the contents of that petition, including, among other things, a description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse and the facts upon which the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse. Existing law provides that if the court finds that all of the estate of the deceased spouse is property passing to the surviving spouse, then the court is required to issue an order describing the property, as specified. Existing law also provides that if the court finds that all or part of the estate of the deceased spouse is not property passing to the surviving spouse, then the court is required to issue an order, as specified. Existing law allows the court, in a case in which property is passing to the surviving spouse or in which property is not passing to the surviving spouse, to issue any further orders that may be necessary to cause delivery of the property or its proceeds to the surviving spouse.

This bill would require the above petition to also include reference to any agreements between the deceased spouse and the surviving spouse affecting the character of property and a description of the property as either community or separate property. This bill would authorize a court to issue orders determining whether any property, or interest therein, of the deceased spouse's estate passing to the surviving spouse is separate property or community property.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13651 of the Probate Code is amended
2 to read:

3 13651. (a) A petition filed pursuant to Section 13650 shall
4 allege that administration of all or a part of the estate of the
5 deceased spouse is not necessary for the reason that all or a part
6 of the estate is property passing to the surviving spouse, and shall
7 set forth all of the following information:

8 (1) If proceedings for the administration of the estate are not
9 pending, the facts necessary to determine the county in which the
10 estate of the deceased spouse may be administered.

11 (2) A description of the property of the deceased spouse which
12 the petitioner alleges is property passing to the surviving spouse,
13 including the trade or business name of any property passing to
14 the surviving spouse that consists of an unincorporated business
15 or an interest in an unincorporated business which the deceased
16 spouse was operating or managing at the time of death, subject to
17 any written agreement between the deceased spouse and the
18 surviving spouse providing for a non pro rata division of the
19 aggregate value of the community property assets or
20 quasi-community assets, or both.

21 (3) The facts upon which the petitioner bases the allegation that
22 all or a part of the estate of the deceased spouse is property passing
23 to the surviving ~~spouse~~: *spouse, including reference to any*
24 *agreements between the deceased spouse and the surviving spouse*
25 *affecting the character of the property.*

26 (4) *A description of the property as either community or separate*
27 *property.*

28 (4)

(5) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section 100 or 101, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

~~(5)~~

(6) (A) The name, age, address, and relation to the deceased spouse of each heir and devisee of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as personal representatives of the deceased spouse, which are known to the petitioner.

~~Disclosure~~

(B) *Disclosure* of any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both, or the affirmative statement that this agreement does not exist. If a dispute arises as to the division of the community property assets or quasi-community property assets, or both, pursuant to this agreement, *or pursuant to allegations contained in the petition as to the characterization of the property as community property or separate property*, the court shall determine the division subject to terms and conditions or other remedies that appear equitable under the circumstances of the case, taking into account the rights of all interested persons.

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

(c) If the petitioner bases the description of the property of the deceased spouse passing to the surviving spouse or the property to be confirmed to the surviving spouse, or both, upon a written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both, a copy of the agreement shall be attached to the petition.

1 SEC. 2. Section 13656 of the Probate Code is amended to read:

2 13656. (a) If the court finds that all of the estate of the deceased
3 spouse is property passing to the surviving spouse, the court shall
4 issue an order describing the property, determining that the property
5 is property passing to the surviving spouse, and determining that
6 no administration is necessary. The court may issue any further
7 orders which may be necessary to cause delivery of the property
8 or its proceeds to the surviving ~~spouse~~. *spouse, including orders*
9 *determining whether any property, or interest therein, of the*
10 *deceased spouse's estate passing to the surviving spouse is*
11 *separate property or community property.*

12 (b) If the court finds that all or part of the estate of the deceased
13 spouse is not property passing to the surviving spouse, the court
14 shall issue an order ~~(1) describing any~~ *describing both of the*
15 *following:*

16 (1) Any property which is not property passing to the surviving
17 spouse, determining that that property does not pass to the
18 surviving spouse and determining that that property is subject to
19 administration under this ~~code~~ *and (2) describing the code.*

20 (2) *The* property, if any, which is property passing to the
21 surviving spouse, determining that that property passes to the
22 surviving spouse, and determining that no administration of that
23 property is necessary. If the court determines that property passes
24 to the surviving spouse, the court may issue any further orders
25 which may be necessary to cause delivery of that property or its
26 proceeds to the surviving ~~spouse~~. *spouse, including orders*
27 *determining whether any property, or interest therein, of the*
28 *deceased spouse's estate passing to the surviving spouse is*
29 *separate property or community property.*

30 (c) If the petition filed under this chapter includes a description
31 of the interest of the surviving spouse in the community or
32 quasi-community property, or both, which belongs to the surviving
33 spouse pursuant to Section 100 or 101 and the court finds that the
34 interest belongs to the surviving spouse, the court shall issue an
35 order describing the property and confirming the ownership of the
36 surviving spouse and may issue any further orders which may be
37 necessary to cause ownership of the property to be confirmed in
38 the surviving spouse.

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